

MADISON COUNTY BOARD OF ZONING APPEALS

IN THE MATTER OF PETITION 2019-SU-005  
BY LONE OAK SOLAR ENERGY, LLC



**ORDER**

Comes now the Madison County Board of Zoning Appeals ("BZA"), and after receiving written and oral evidence at a July 30, 2019 hearing, as well as the continuation of that hearing on both August 29, 2019 and September 24, 2019, now states the following:

1. Chair Mary Jane Baker, Vice Chair John Simmermon, and Board Members Jerry Stamm, Cory Bohlander, and Curt Stephenson were all present during the July 30, 2019 hearing, as well as both continuations thereof.
2. After considering all oral and written evidence, the BZA hereby, pursuant to a 3-2 vote, APPROVES 2019-SU-005 submitted by Petitioner Lone Oak Solar Energy, LLC. Chair Baker, Vice Chair Simmermon, and Stamm voting YES; Bohlander and Stephenson voting NO.
3. The BZA hereby adopts the Findings of Fact for Special Use contained in the July 30, 2019 Staff Report of the Madison County Board of Zoning Appeals, which is attached hereto as Exhibit "A."
4. The BZA's adoption of the Findings of Fact for Special Use are contingent on the Board's Conditions for Adoption of Findings of Fact, which are attached hereto as Exhibit "B."

SO APPROVED ON THE 24<sup>TH</sup> DAY OF SEPTEMBER, 2019

/s/ MARY JANE BAKER

MARY JANE BAKER, CHAIR

MADISON COUNTY BOARD OF ZONING APPEALS

STAFF REPORT  
MADISON COUNTY BOARD OF ZONING APPEALS  
July 30, 2019  
Petition 2019--SU--005

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?*

No, there will be no injury if the attached conditions are adopted. The proposed project will comply with all aspects of the Land Use and Development Code, will obtain all appropriate approvals from the Indiana Department of Environmental Management (IDEM) and the Madison County Soil and Water Conservation District, and will comply with all applicable local, state and federal construction and drainage requirements. The project includes perimeter security fencing with controlled points of ingress/egress and a secondary access location to facilitate emergency response. Twenty-four hour security monitoring will be in place during construction and while in operation.

2. *Will the requirements and development standards set forth in the district for such exception be met?*

Yes. The petitioners have submitted two petitions for variance requests. The first is requesting the removal of building setback lines along adjacent properties in which the project will be located. The second request is an extension of the three (3) years maximum in order to begin construction.

3. *Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?*

No, the proposed use will not subvert and permanently injure other property or uses in the same district. Agriculture uses have extended to energy production for decades. The harnessing of solar energy is a permitted use in the Agriculture (AG) zoning district with the approval of a Special Use.

An analysis of the impact of property values that a major solar energy project may have on nearby landowners has been conducted by numerous independent appraisers throughout the country. A report by Cohn Reznick, a Real Estate Valuation company, conducted a property value impact study on the Newark Road Solar Project in Kendall County, Illinois and determined there was no evidence of a Large Scale Solar Farm having an adverse impact on property values for properties near the Solar Farm. Cohn Reznick also conducted a study looking at nine different Large Scale Solar Farms, four of which are in Illinois, four of which are in Indiana, and one of which is in Minnesota. The same determination was made that there is no evidence that Large Scale Solar Farms have an adverse impact on property values. Marous & Company conducted an independent Market Impact Analysis for the proposed Lone Oak Solar Energy Project, reaching the same conclusion determined in the aforementioned studies. A study completed in May 2018 by Project Director Dr. Varun Rai of the University of Texas at Austin holds a differing viewpoint in comparison to the numerous Market Impact Analysis Studies. Specific conditions regarding setbacks and distance of residential structures from solar panels may negate concerns addressed by the University of Texas at Austin study. As

STAFF REPORT  
MADISON COUNTY BOARD OF ZONING APPEALS  
July 30, 2019

Petition 2019-SU-005

distance is increased between residential structures and solar panels, the University of Texas at Austin study has similar findings to those produced by the extensive Cohn, Reznick, Marous & Company study. Although each study referenced is an extensive study with similar findings, none of the studies necessarily take into account the unique nature of each parcel of real estate and vicinity. Based on the similarities of each report, the study prepared by Cohn Reznick Marous & Company is complete, in line with each reviewed study, and should be adopted if the attached conditions are adopted.

Surface drainage patterns will not be disrupted by the development and before construction may begin. Drainage Board approval will be required to insure sub-surface drainage tiles and surface drainage is not adversely impacted. Between the rows of panels and under the panels, vegetation will be planted that will reduce the runoff coefficient releasing less water onto neighboring parcels. Lone Oak Solar LLC has stated that all private drain tiles damaged during construction will be repaired as damage occurs, and any issues that appear post-construction will be repaired as quickly as possible at the project owner's expense.

4. *Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?*

Yes, the project will maintain the overall rural character and the overall environmental integrity in Madison County, both of which are stated goals in the Madison County Comprehensive Plan. The proposed project directly enhances and preserves agricultural activities as it will not result in a permanent loss of agricultural land, at the end of the project's life the project area will be fully restored per the Decommissioning Plan Agreement and the Soil Reclamation Plan, the property(s) that are part of the project will remain zoned Agriculture so the property will not need to be rezoned back to Agriculture, and the soils will be preserved resulting in fertile soils at the end of the projects life. The Special Use will insure that the agricultural property in the project area is not subdivided for the construction of new homes, resulting in the permanent reduction of agricultural land. The scale of the project does require modification in order to be completely consistent with the Comprehensive Plan. The attached conditions will establish that consistency with the Comprehensive Plan.

**MADISON COUNTY BOARD OF ZONING APPEALS**  
**CONDITIONS FOR ADOPTION OF FINDINGS OF FACT,**  
**2019-SU-005, 2019-V-012, 2019-V-013**

September 24, 2019

The Madison County Board of Zoning Appeals ("BZA") requires the following conditions for the approval of 2019-SU-001, 2019-V-005, and 2019-V-006, and the findings of fact by contained therein are contingent on the below listed conditions:

1. Except as noted below, Petitioner shall comply with all terms of the Decommissioning Plan Agreement as submitted to the case file.
2. No solar panel shall be located closer than 500 feet from an existing non-participating residential structure or closer than 200 feet from the property line of a non-participating owner; provided, however, that solar panels may be located no closer than 250 feet from a non-participating residential structure or closer than 100 feet from a non-participating owner's property line of a parcel containing a residential structure or closer than 30 feet from a non-participating owner's property line of an unimproved parcel only if (a) a non-participating owner consents, in writing, to the placement of solar panels no closer than 250 feet from that owner's residential structure or no closer than 100 feet from a non-participating owner's property line of a parcel containing a residential structure or no closer than 30 feet from a non-participating owner's property line of an unimproved parcel; and, (b) the written consent described herein is recorded with the Madison County Recorder's office, with a copy of the recorded instrument provided to the Madison County Planning Department and Madison County Plan Commission. Notwithstanding the above, all solar panels shall meet the Madison County setback requirements of (i) 25 feet from side yards, (ii) 30 feet from rear yards, (iii) 150 feet from arterial roads, (iv) 100 feet from collector roads; and (v) 25 feet from local roads.
3. Landscaping shall be installed in compliance with the Petitioner submitted Lone Oak Solar Landscape Plan dated July 2, 2019 ("19.07.02\_Lone Oak Landscape Plan (Buffer & Seeding Plan)-2") with the exception that, when requested by a non-participating abutting landowner with a sight line to a solar panel in question, evergreen trees or vegetation shall be installed in place of the vegetation specified in the Landscape Plan.
4. For repair of drainage infrastructure or systems damages by any cause connected with the Project, Petitioner shall restore the drainage infrastructure or system to pre-existing conditions or better within a period of three (3) months after receipt of notice of such damage, unless such repair is rendered impractical by weather or other natural force. Petitioners shall be responsible for all expenses related to repairs, relocations, reconfigurations, and replacements of drainage infrastructure and systems that are damaged as a direct result of the Project. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Drainage Board ("Drainage Board"), payable to the Drainage Board to address any need for

drainage tile repair, replacement or re-routing caused by construction activities or installation of the Project, such bond to be posted within 45 days after commencement of Project commercial operations date and to remain in effect for a period of five (5) years thereafter. The Drainage Board shall determine and adjudicate whether claims brought by an adjacent property owner for damage to drainage tile directly result from the project based on substantial evidence.

5. Petitioner shall fully comply with Indiana Code requirements regarding Regulated Drains, mutual drains, and surface drains, except as otherwise approved by the Drainage Board and any other necessary bodies, including, but not limited to, the Madison County Storm Water Management Ordinance.

6. Petition shall not construct any additional phases or expand the Lone Oak Solar Project anywhere in Madison County.

7. The Project production capacity for the entire Lone Oak Solar Project shall not exceed 120 megawatts.

8. Petitioner shall provide equipment specifications for the solar energy system to the Madison County Planning Executive Director prior to the issuance of Improvement Location Permits for the final site design and construction of the Project.

9. Petitioner shall repair documented damages to County roads damaged during construction or operations to the pre-construction condition pursuant to the direction of the Madison County Highway Superintendent. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Board of Commissioners to address said repairs.

10. Unless otherwise stated in these conditions, Petitioner shall comply with the terms of the Property Operation and Maintenance Plan as submitted to the case file.

11. Upon completion of construction of the Project, a representative from the Operator shall conduct, at Operator's expense, annual training and drills with local emergency responders.

12. Petitioner shall pursue an agreement with the Drainage Board and Madison County Surveyor ("Surveyor"). Petitioner shall comply with the reasonable direction of the Surveyor regarding (a) retention at Petitioner's sole expense of an appropriate inspector, including a "not to exceed" budget; (b) notification to the Surveyor when all drainage improvements and work within the public right-of-way have been completed and inspected by the inspector; and (c) timeline and process for repair of any damage caused by the Project.

13. Prior to initiating final construction, petitioner will engage an independent third party to develop a groundwater monitoring program within the fence line of the Project, which will include, but not be limited to, establishment of baseline levels for constituents of concern and monitoring every two (2) years for the life of the Project. The results of the monitoring

program may be shared with land owners as required by the operative Lease and Easement Agreements and shall be provided to any necessary government agencies as required by law. In the event of breakage, destruction, or severe damage to a panel or panels subject to this Petition, by any natural or man-made cause, Petitioner shall, as soon as practicable, determine the levels of constituents of concern in the ground water within the fence line of the Project. Groundwater monitoring required due to breakage, destruction, or severe damage to panel(s) shall not obviate or alter the two year water monitoring requirement described herein.

14. Prior to the issuance of an Improvement Location Permit for final construction, Petitioner shall provide the Executive Director a topographic and hydrology study of the Project site.

15. Noise levels produced by the Project under normal operating conditions shall, in no event, exceed 45dB(A) $L_{eq}$  (1 hour) at occupied residences of non-participating land owners.

16. No lighting will be installed or operated on the Project site other than as needed for 1) security lighting at the Project gate(s), 2) emergency lighting at inverters and substations as needed and otherwise in the Project area for emergency responses, 3) within the substation footprint, 4) inspection/repair purposes, 5) internal, external, and down lighting of the O&M building, and 6) as otherwise required by applicable law.

17. Petitioner shall post a "5A" surety bond, in an amount no less than \$5,650,240, the estimated cost of decommissioning the project as provided by Petitioner's Decommissioning Plan (See Section 4.1, Table 3), payable to the Madison County Plan Commission, for possible decommissioning costs. The estimated cost of decommissioning the project shall be reevaluated every three (3) years, with the amount of the surety payable to the Madison County Plan Commission adjusted as necessary to fully secure the Plan Commission for the full estimated cost of decommissioning.

18. All required fencing will be 6' chain link fence with barbed wire utilized where appropriate.

19. The Project shall be complete and operational on or before December 31, 2023.

ADOPTED THIS 24<sup>th</sup> DAY OF SEPTEMBER, 2019.

MADISON COUNTY BOARD OF ZONING APPEALS

/s/ Mary Jane Baker

MARY JANE BAKER, CHAIRMAN

EXHIBIT "B" PAGE 3 OF 3

MADISON COUNTY BOARD OF ZONING APPEALS  
IN THE MATTER OF PETITION 2019-V-012  
BY LONE OAK SOLAR ENERGY, LLC



## ORDER

Comes now the Madison County Board of Zoning Appeals ("BZA"), and after receiving written and oral evidence at a July 30, 2019 hearing, as well as the continuation of that hearing on both August 29, 2019 and September 24, 2019, now states the following:

1. Chair Mary Jane Baker, Vice Chair John Simmermon, and Board Members Jerry Stamm, Cory Bohlander, and Curt Stephenson were all present during the July 30, 2019 hearing, as well as both continuations thereof.
2. After considering all oral and written evidence, the BZA hereby, pursuant to a 3-2 vote, APPROVES 2019-V-012 submitted by Petitioner Lone Oak Solar Energy, LLC. Chair Baker, Vice Chair Simmermon, and Stamm voting YES; Bohlander and Stephenson voting NO.
3. The BZA hereby adopts the Findings of Fact for Special Use contained in the July 30, 2019 Staff Report of the Madison County Board of Zoning Appeals, which is attached hereto as Exhibit "A."
4. The BZA's adoption of the Findings of Fact for Special Use are contingent on the Board's Conditions for Adoption of Findings of Fact, which are attached hereto as Exhibit "B."

SO APPROVED ON THE 24<sup>TH</sup> DAY OF SEPTEMBER, 2019

/s/ MARY JANE BAKER  
MARY JANE BAKER, CHAIR  
MADISON COUNTY BOARD OF ZONING APPEALS



STAFF REPORT  
MADISON COUNTY BOARD OF ZONING APPEALS

July 30, 2019

Petition 2019-V-012

1. *Will the approval be injurious to the public health, safety, morals, and general welfare of the community?*

No, there will be no injury if the attached conditions are adopted. The proposed project will comply with all other aspects of the Land Use and Development Code, will obtain all appropriate approvals from the Indiana Department of Environmental Management (IDEM) and the Madison County Soil and Water Conservation District, and will comply with all applicable local, state and federal construction and drainage requirements. The project includes perimeter security fencing with controlled points of ingress/egress and a secondary access location to facilitate emergency response. Twenty-four hour security monitoring will be in place during construction and while in operation.

2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?*

No, the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. An analysis of the impact of property values that a major solar energy project may have on nearby landowners has been conducted by numerous independent appraisers throughout the country. A report by Cohn Reznick, a Real Estate Valuation company conducted a property value impact study on the Newark Road Solar Project in Kendall County, Illinois and determined there was no evidence of a Large Scale Solar Farm having an adverse impact on property values for properties near the Solar Farm. Cohn Reznick also conducted a study looking at nine different Large Scale Solar Farms, four of which are in Illinois, four of which are in Indiana, and one of which is in Minnesota. The same determination was made that there is no evidence that Large Scale Solar Farms have an adverse impact on property values. Marous & Company conducted an independent Market Impact Analysis for the proposed Lone Oak Solar Energy Project, reaching the same conclusion determined in the aforementioned studies. A study completed in May 2018 by Project Director Dr. Varun Rai of the University of Texas at Austin holds a differing viewpoint in comparison to the numerous Market Impact Analysis Studies. Specific conditions regarding setbacks and distance of residential structures from solar panels may negate concerns addressed by the University of Texas at Austin study. As distance is increased between residential structures and solar panels, the University of Texas at Austin study has similar findings to those produced by the extensive Cohn, Reznick, Marous & Company study. Although each study referenced is an extensive study with similar findings, none of the studies necessarily take into account the unique nature of each parcel of real estate and vicinity. Based on the similarities of each report, the study prepared by Cohn Reznick Marous & Company is complete, in line with each reviewed study, and should be adopted if the attached conditions are adopted.

Surface drainage patterns will not be disrupted by the development and before construction may begin, Drainage Board approval will be required to insure sub-surface drainage tiles and surface drainage is not adversely impacted. Between the rows of panels and under the panels, vegetation will be planted that will reduce the runoff coefficient releasing less water onto neighboring parcels. Lone



STAFF REPORT  
MADISON COUNTY BOARD OF ZONING APPEALS  
July 30, 2019  
Petition 2019-V-012

Oak Solar LLC has stated that all private drain tiles damaged during construction will be repaired as damage occurs, and any issues that appear post-construction will be repaired as quickly as possible at the project owner's expense.

3. *Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?*

Yes. Enforcing the required building setback will result in a practical difficulty of the project as it would be impossible to develop a seamless development resulting in additional cost, lost space, and overall construction difficulty resulting in a negative effect on the project's economics and massive reduction of efficiencies.

\*For pictures, please view Petition 2019-SU-005.

BAN

**MADISON COUNTY BOARD OF ZONING APPEALS**  
**CONDITIONS FOR ADOPTION OF FINDINGS OF FACT,**  
**2019-SU-005, 2019-V-012, 2019-V-013**

September 24, 2019

The Madison County Board of Zoning Appeals ("BZA") requires the following conditions for the approval of 2019-SU-001, 2019-V-005, and 2019-V-006, and the findings of fact by contained therein are contingent on the below listed conditions:

1. Except as noted below, Petitioner shall comply with all terms of the Decommissioning Plan Agreement as submitted to the case file.
2. No solar panel shall be located closer than 500 feet from an existing non-participating residential structure or closer than 200 feet from the property line of a non-participating owner; provided, however, that solar panels may be located no closer than 250 feet from a non-participating residential structure or closer than 100 feet from a non-participating owner's property line of a parcel containing a residential structure or closer than 30 feet from a non-participating owner's property line of an unimproved parcel only if (a) a non-participating owner consents, in writing, to the placement of solar panels no closer than 250 feet from that owner's residential structure or no closer than 100 feet from a non-participating owner's property line of a parcel containing a residential structure or no closer than 30 feet from a non-participating owner's property line of an unimproved parcel; and, (b) the written consent described herein is recorded with the Madison County Recorder's office, with a copy of the recorded instrument provided to the Madison County Planning Department and Madison County Plan Commission. Notwithstanding the above, all solar panels shall meet the Madison County setback requirements of (i) 25 feet from side yards, (ii) 30 feet from rear yards, (iii) 150 feet from arterial roads, (iv) 100 feet from collector roads; and (v) 25 feet from local roads.
3. Landscaping shall be installed in compliance with the Petitioner submitted Lone Oak Solar Landscape Plan dated July 2, 2019 ("19.07.02\_Lone Oak Landscape Plan (Buffer & Seeding Plan)-2") with the exception that, when requested by a non-participating abutting landowner with a sight line to a solar panel in question, evergreen trees or vegetation shall be installed in place of the vegetation specified in the Landscape Plan.
4. For repair of drainage infrastructure or systems damages by any cause connected with the Project, Petitioner shall restore the drainage infrastructure or system to pre-existing conditions or better within a period of three (3) months after receipt of notice of such damage, unless such repair is rendered impractical by weather or other natural force. Petitioners shall be responsible for all expenses related to repairs, relocations, reconfigurations, and replacements of drainage infrastructure and systems that are damaged as a direct result of the Project. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Drainage Board ("Drainage Board"), payable to the Drainage Board to address any need for



drainage tile repair, replacement or re-routing caused by construction activities or installation of the Project, such bond to be posted within 45 days after commencement of Project commercial operations date and to remain in effect for a period of five (5) years thereafter. The Drainage Board shall determine and adjudicate whether claims brought by an adjacent property owner for damage to drainage tile directly result from the project based on substantial evidence.

5. Petitioner shall fully comply with Indiana Code requirements regarding Regulated Drains, mutual drains, and surface drains, except as otherwise approved by the Drainage Board and any other necessary bodies, including, but not limited to, the Madison County Storm Water Management Ordinance.

6. Petitioner shall not construct any additional phases or expand the Lone Oak Solar Project anywhere in Madison County.

7. The Project production capacity for the entire Lone Oak Solar Project shall not exceed 120 megawatts.

8. Petitioner shall provide equipment specifications for the solar energy system to the Madison County Planning Executive Director prior to the issuance of Improvement Location Permits for the final site design and construction of the Project.

9. Petitioner shall repair documented damages to County roads damaged during construction or operations to the pre-construction condition pursuant to the direction of the Madison County Highway Superintendent. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Board of Commissioners to address said repairs.

10. Unless otherwise stated in these conditions, Petitioner shall comply with the terms of the Property Operation and Maintenance Plan as submitted to the case file.

11. Upon completion of construction of the Project, a representative from the Operator shall conduct, at Operator's expense, annual training and drills with local emergency responders.

12. Petitioner shall pursue an agreement with the Drainage Board and Madison County Surveyor ("Surveyor"). Petitioner shall comply with the reasonable direction of the Surveyor regarding (a) retention at Petitioner's sole expense of an appropriate inspector, including a "not to exceed" budget; (b) notification to the Surveyor when all drainage improvements and work within the public right-of-way have been completed and inspected by the inspector; and (c) timeline and process for repair of any damage caused by the Project.

13. Prior to initiating final construction, petitioner will engage an independent third party to develop a groundwater monitoring program within the fence line of the Project, which will include, but not be limited to, establishment of baseline levels for constituents of concern and monitoring every two (2) years for the life of the Project. The results of the monitoring

program may be shared with land owners as required by the operative Lease and Easement Agreements and shall be provided to any necessary government agencies as required by law. In the event of breakage, destruction, or severe damage to a panel or panels subject to this Petition, by any natural or man-made cause, Petitioner shall, as soon as practicable, determine the levels of constituents of concern in the ground water within the fence line of the Project. Groundwater monitoring required due to breakage, destruction, or severe damage to panel(s) shall not obviate or alter the two year water monitoring requirement described herein.

14. Prior to the issuance of an Improvement Location Permit for final construction, Petitioner shall provide the Executive Director a topographic and hydrology study of the Project site.

15. Noise levels produced by the Project under normal operating conditions shall, in no event, exceed 45dB(A)<sub>L<sub>eq</sub></sub> (1 hour) at occupied residences of non-participating land owners.

16. No lighting will be installed or operated on the Project site other than as needed for 1) security lighting at the Project gate(s), 2) emergency lighting at inverters and substations as needed and otherwise in the Project area for emergency responses, 3) within the substation footprint, 4) inspection/repair purposes, 5) internal, external, and down lighting of the O&M building, and 6) as otherwise required by applicable law.

17. Petitioner shall post a "5A" surety bond, in an amount no less than \$5,650,240, the estimated cost of decommissioning the project as provided by Petitioner's Decommissioning Plan (See Section 4.1, Table 3), payable to the Madison County Plan Commission, for possible decommissioning costs. The estimated cost of decommissioning the project shall be reevaluated every three (3) years, with the amount of the surety payable to the Madison County Plan Commission adjusted as necessary to fully secure the Plan Commission for the full estimated cost of decommissioning.

18. All required fencing will be 6' chain link fence with barbed wire utilized where appropriate.

19. The Project shall be complete and operational on or before December 31, 2023.

ADOPTED THIS 24<sup>th</sup> DAY OF SEPTEMBER, 2019.

MADISON COUNTY BOARD OF ZONING APPEALS

/s/ Mary Jane Baker

MARY JANE BAKER, CHAIRMAN

EXHIBIT "B" PAGE 3 OF 3



MADISON COUNTY BOARD OF ZONING APPEALS

IN THE MATTER OF PETITION 2019-V-013  
BY LONE OAK SOLAR ENERGY, LLC



**ORDER**

Comes now the Madison County Board of Zoning Appeals (“BZA”), and after receiving written and oral evidence at a July 30, 2019 hearing, as well as the continuation of that hearing on both August 29, 2019 and September 24, 2019, now states the following:

1. Chair Mary Jane Baker, Vice Chair John Simmermon, and Board Members Jerry Stamm, Cory Bohlander, and Curt Stephenson were all present during the July 30, 2019 hearing, as well as both continuations thereof.
2. After considering all oral and written evidence, the BZA hereby, pursuant to a 3-2 vote, APPROVES 2019-V-013 submitted by Petitioner Lone Oak Solar Energy, LLC. Chair Baker, Vice Chair Simmermon, and Stamm voting YES; Bohlander and Stephenson voting NO.
3. The BZA hereby adopts the Findings of Fact for Special Use contained in the July 30, 2019 Staff Report of the Madison County Board of Zoning Appeals, which is attached hereto as Exhibit “A.”
4. The BZA’s adoption of the Findings of Fact for Special Use are contingent on the Board’s Conditions for Adoption of Findings of Fact, which are attached hereto as Exhibit “B.”

SO APPROVED ON THE 24<sup>TH</sup> DAY OF SEPTEMBER, 2019

/s/ MARY JANE BAKER  
MARY JANE BAKER, CHAIR  
MADISON COUNTY BOARD OF ZONING APPEALS



STAFF REPORT  
MADISON COUNTY BOARD OF ZONING APPEALS  
July 30, 2019  
Petition 2019 -V-013

FINDINGS of FACT for VARIANCES

1. *Will the approval be injurious to the public health, safety, morals, and general welfare of the community?*

No. There is no convincing evidence that exists suggesting that an extension of the three (3) year time limit to initiate the project would cause injury or have an adverse effect on the public health, safety, morals, and general welfare. A project given an indefinite time to be initiated would injure the public by the uncertainty it would create. A definitively defined time should be established and should not exceed 5 years.

2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?*

An extension beyond 3 years that is definitively defined will not cause a reduction in value, particularly with the attached conditions.

3. *Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?*

Yes. The proposed project has multiple variables and is very complex, requiring significant planning and coordination with multiple entities affiliated with the project after the approval of a Special Use and variance requests. The Madison County Land Use and Development Plan does not contemplate such a large, complex project.

\*For pictures, please review Petition 2019-SU-001.

BAN

**MADISON COUNTY BOARD OF ZONING APPEALS**  
**CONDITIONS FOR ADOPTION OF FINDINGS OF FACT,**  
**2019-SU-005, 2019-V-012, 2019-V-013**

September 24, 2019

The Madison County Board of Zoning Appeals ("BZA") requires the following conditions for the approval of 2019-SU-001, 2019-V-005, and 2019-V-006, and the findings of fact by contained therein are contingent on the below listed conditions:

1. Except as noted below, Petitioner shall comply with all terms of the Decommissioning Plan Agreement as submitted to the case file.
2. No solar panel shall be located closer than 500 feet from an existing non-participating residential structure or closer than 200 feet from the property line of a non-participating owner; provided, however, that solar panels may be located no closer than 250 feet from a non-participating residential structure or closer than 100 feet from a non-participating owner's property line of a parcel containing a residential structure or closer than 30 feet from a non-participating owner's property line of an unimproved parcel only if (a) a non-participating owner consents, in writing, to the placement of solar panels no closer than 250 feet from that owner's residential structure or no closer than 100 feet from a non-participating owner's property line of a parcel containing a residential structure or no closer than 30 feet from a non-participating owner's property line of an unimproved parcel; and, (b) the written consent described herein is recorded with the Madison County Recorder's office, with a copy of the recorded instrument provided to the Madison County Planning Department and Madison County Plan Commission. Notwithstanding the above, all solar panels shall meet the Madison County setback requirements of (i) 25 feet from side yards, (ii) 30 feet from rear yards, (iii) 150 feet from arterial roads, (iv) 100 feet from collector roads; and (v) 25 feet from local roads.
3. Landscaping shall be installed in compliance with the Petitioner submitted Lone Oak Solar Landscape Plan dated July 2, 2019 ("19.07.02\_Lone Oak Landscape Plan (Buffer & Seeding Plan)-2") with the exception that, when requested by a non-participating abutting landowner with a sight line to a solar panel in question, evergreen trees or vegetation shall be installed in place of the vegetation specified in the Landscape Plan.
4. For repair of drainage infrastructure or systems damages by any cause connected with the Project, Petitioner shall restore the drainage infrastructure or system to pre-existing conditions or better within a period of three (3) months after receipt of notice of such damage, unless such repair is rendered impractical by weather or other natural force. Petitioners shall be responsible for all expenses related to repairs, relocations, reconfigurations, and replacements of drainage infrastructure and systems that are damaged as a direct result of the Project. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Drainage Board ("Drainage Board"), payable to the Drainage Board to address any need for



drainage tile repair, replacement or re-routing caused by construction activities or installation of the Project, such bond to be posted within 45 days after commencement of Project commercial operations date and to remain in effect for a period of five (5) years thereafter. The Drainage Board shall determine and adjudicate whether claims brought by an adjacent property owner for damage to drainage tile directly result from the project based on substantial evidence.

5. Petitioner shall fully comply with Indiana Code requirements regarding Regulated Drains, mutual drains, and surface drains, except as otherwise approved by the Drainage Board and any other necessary bodies, including, but not limited to, the Madison County Storm Water Management Ordinance.

6. Petitioner shall not construct any additional phases or expand the Lone Oak Solar Project anywhere in Madison County.

7. The Project production capacity for the entire Lone Oak Solar Project shall not exceed 120 megawatts.

8. Petitioner shall provide equipment specifications for the solar energy system to the Madison County Planning Executive Director prior to the issuance of Improvement Location Permits for the final site design and construction of the Project.

9. Petitioner shall repair documented damages to County roads damaged during construction or operations to the pre-construction condition pursuant to the direction of the Madison County Highway Superintendent. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Board of Commissioners to address said repairs.

10. Unless otherwise stated in these conditions, Petitioner shall comply with the terms of the Property Operation and Maintenance Plan as submitted to the case file.

11. Upon completion of construction of the Project, a representative from the Operator shall conduct, at Operator's expense, annual training and drills with local emergency responders.

12. Petitioner shall pursue an agreement with the Drainage Board and Madison County Surveyor ("Surveyor"). Petitioner shall comply with the reasonable direction of the Surveyor regarding (a) retention at Petitioner's sole expense of an appropriate inspector, including a "not to exceed" budget; (b) notification to the Surveyor when all drainage improvements and work within the public right-of-way have been completed and inspected by the inspector; and (c) timeline and process for repair of any damage caused by the Project.

13. Prior to initiating final construction, petitioner will engage an independent third party to develop a groundwater monitoring program within the fence line of the Project, which will include, but not be limited to, establishment of baseline levels for constituents of concern and monitoring every two (2) years for the life of the Project. The results of the monitoring

program may be shared with land owners as required by the operative Lease and Easement Agreements and shall be provided to any necessary government agencies as required by law. In the event of breakage, destruction, or severe damage to a panel or panels subject to this Petition, by any natural or man-made cause, Petitioner shall, as soon as practicable, determine the levels of constituents of concern in the ground water within the fence line of the Project. Groundwater monitoring required due to breakage, destruction, or severe damage to panel(s) shall not obviate or alter the two year water monitoring requirement described herein.

14. Prior to the issuance of an Improvement Location Permit for final construction, Petitioner shall provide the Executive Director a topographic and hydrology study of the Project site.

15. Noise levels produced by the Project under normal operating conditions shall, in no event, exceed 45dB(A)<sub>Leq</sub> (1 hour) at occupied residences of non-participating land owners.

16. No lighting will be installed or operated on the Project site other than as needed for 1) security lighting at the Project gate(s), 2) emergency lighting at inverters and substations as needed and otherwise in the Project area for emergency responses, 3) within the substation footprint, 4) inspection/repair purposes, 5) internal, external, and down lighting of the O&M building, and 6) as otherwise required by applicable law.

17. Petitioner shall post a "5A" surety bond, in an amount no less than \$5,650,240, the estimated cost of decommissioning the project as provided by Petitioner's Decommissioning Plan (See Section 4.1, Table 3), payable to the Madison County Plan Commission, for possible decommissioning costs. The estimated cost of decommissioning the project shall be reevaluated every three (3) years, with the amount of the surety payable to the Madison County Plan Commission adjusted as necessary to fully secure the Plan Commission for the full estimated cost of decommissioning.

18. All required fencing will be 6' chain link fence with barbed wire utilized where appropriate.

19. The Project shall be complete and operational on or before December 31, 2023.

ADOPTED THIS 24<sup>th</sup> DAY OF SEPTEMBER, 2019.

MADISON COUNTY BOARD OF ZONING APPEALS

/s/ Mary Jane Baker

MARY JANE BAKER, CHAIRMAN

EXHIBIT "B" PAGE 3 OF 3